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May 5, 1998

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Attention: Stop Code 1800D5
Chief, Allocations Branch

Re: Amendment of Section 73.202(b) of the Commission Rules
Table of FM Channel Allotments
(DeRuyter and Chittenango, New York)
MM Docket No. 98-22; RM-9183

Dear Ms. Salas:

On behalf of Cox Radio, Inc. ("Cox"), we hereby transmit to you an original and four copies of Cox's reply comments in response to the Commission's *Notice of Proposed Rulemaking* in the above-captioned proceeding.

Please contact the undersigned if any questions should arise.

Respectfully submitted,


Werner K. Hartenberger

Enclosure

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments,) MM Docket No. 98-22
FM Broadcast Stations.) RM-9183
(DeRuyter and Chittenango, New York))

MAY - 5 1998

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

To: Chief, Allocations Branch
Stop Code 1800D5

REPLY COMMENTS OF COX RADIO, INC.

Cox Radio, Inc. ("Cox"),^{1/} by its attorneys, hereby submits these reply comments in response to the Commission's *Notice of Proposed Rulemaking* in the above-captioned proceeding.^{2/} Cox reaffirms its opposition to the proposal of Cram Communications, LLC ("Cram"), licensee of WVOA(FM), to reallocate Channel 286B from DeRuyter, New York, to Chittenango, New York, and to modify Station WVOA's license to specify Chittenango as its community of license. As shown herein, Cram fails to identify any public interest benefit that would justify a waiver of Commission policies to remove DeRuyter's sole local service. Nor does Cram explain why it cannot provide specialized service to Chittenango. For these reasons, Channel 286B should remain allotted to DeRuyter.

^{1/} Cox is the licensee of five radio stations in the Syracuse radio market.

^{2/} *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (DeRuyter and Chittenango, New York), DA 93-326 (Rel. Feb. 27, 1998) ("NPRM").*

I. Cram Has Not Demonstrated that Reallotment of WVOA Is in the Public Interest.

Cram has the burden of demonstrating that its proposal is in the public interest.^{3/} This public interest showing must justify the removal of DeRuyter's sole local service and overcome DeRuyter's significant expectation that its existing local transmission service of over fifty years will continue. The cumulative effect of these considerations should require Cram to produce an especially high public interest showing to justify severing WVOA's relationship with DeRuyter. Cram, however, has not demonstrated that its proposal warrants a waiver of the Commission's policies. Cram heedlessly relies solely on WVOA's history, DeRuyter's condition as a community and Chittenango's greater population as support for its proposal. Although the Commission noted Chittenango's greater population in the *NPRM*, it also stated that Cram would need to show other public interest benefits justifying grant of a waiver of the Commission's policies.^{4/} As demonstrated herein, Cram's proposal lacks any indicia of a public interest benefit and should be denied.

A. WVOA's Origins Are Irrelevant.

The stations that comprised the Rural Radio Network were disbanded beginning in 1981. Thus, for seventeen years WVOA has operated apart from the network and has been providing programming that should meet the needs and interests of DeRuyter. Any effect the network may have had previously on the station has long since dissipated and cannot be the basis for changing WVOA's community of license today.^{5/} Moreover, the other stations that originally comprised

^{3/} See *id.* ¶ 3.

^{4/} See *id.*

^{5/} Even if the station's earlier operations have some minuscule relevance to the station's operations today, Cram bought WVOA in 1996 on notice of WVOA's history. Cram

the Rural Radio Network continue to serve their original communities of license.^{6/} This suggests that the network's dissolution did not obviate the need for the present allotments. Furthermore, Cram does not offer any evidence that demonstrates why WVOA merits reallocation but other "historic anomal[ies]" need not be redistributed.

Equally as unpersuasive is Cram's argument that it is an inefficient use of spectrum for a Class B "regional" station to be licensed to a small community such as DeRuyter.^{7/} The Commission long ago abolished its policy of allotting higher powered channels only to communities of a certain size.^{8/} Indeed, the Commission noted that "[s]ome small towns are the population center[s] for a sizeable area. Since a Class A channel would not be able to cover this entire area, a Class B or C channel is needed."^{9/} DeRuyter clearly fits this characterization as a population center approximately equidistant from Syracuse and Cortland that serves the surrounding farm communities in Madison, Cortland, Onondaga and Cheango counties. In

hardly "inherited" the station and should not be afforded relief from conditions that it undertook on its own volition. If Cram did not want a station that serves a rural radio market, then it should have bought a metropolitan radio station. Behind Cram's proposal is its plan to turn WVOA into a Syracuse station while abandoning the farm community of DeRuyter. Craig Fox, president and eighty percent owner of Cram, admitted as much in an April 1997 Syracuse New-Times article by declaring that he intends to move WVOA closer to Syracuse and change its programming to a more commercial format. *See Love Radio* (visited May 5, 1998) <<http://web.syr.edu/~swmedici/fm/wvoa.html>>.

^{6/} WNUC(FM), Weatherfield, New York (formerly WFNF); WMIV-FM, Bristol, New York (formerly WVBK); WJIV(FM), Cherry Valley, New York (formerly WVCV); and WQNY(FM), Ithaca, New York (formerly WVFC).

^{7/} *See Comments of Cram Communications, LLC* at 5 (filed Apr. 17, 1998) ("Cram Comments").

^{8/} *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

^{9/} *Id.* at 97.

contrast, Cram's allotment argument flies in the face of the Commission's mandate to distribute licenses equitably, fairly and efficiently.^{10/} The logical progression of Cram's argument would lead to a migration of powerful Class B and C stations to metropolises and a splintering of rural communities among multiple Class A stations with rural areas losing radio service due to the constraints of the minimum distance separation requirements. Contrary to Cram's assertions, the station's Class B status is an important reason to retain WVOA in DeRuyter.

B. DeRuyter is a Growing Community.

Cram erroneously suggests that the public interest would be served by a reallocation because DeRuyter is a community on the wane.^{11/} To the contrary, DeRuyter is a community budding with growth. Its population is on the rise—growing over sixteen percent between 1990 and 1996.^{12/} The combined population in 1996 of the village and town of DeRuyter is estimated

^{10/} 47 U.S.C. § 307(b) (1994).

^{11/} Cram alleges that DeRuyter has "ceased to exist as a community," but provides no evidence that DeRuyter is no longer a community according to Commission precedent. DeRuyter is listed in the U.S. Census. Its population exceeds that of other communities allotted for FM service. *See, e.g., Dearing, Kansas*, 11 FCC Rcd 12120 (1996). It is an incorporated village with an elected mayor, village trustees and a village justice. DeRuyter has a local school system, a number of churches, several commercial businesses, a library and a zip code. Not only has DeRuyter satisfied the Commission's requirement that allotted communities be either incorporated or listed in the U.S. Census, *see, e.g., Hannibal, Ohio*, 6 FCC Rcd 2144 (1991), but these facts clearly demonstrate that DeRuyter is a geographically identifiable population grouping. Therefore, DeRuyter is a community for allotment purposes.

^{12/} *See SU-96-7 Estimates of the Population of Places: Annual Time Series, July 1, 1991 to July 1, 1996* (visited May 5, 1998) <http://www.census.gov/population/estimates/metro-city/scts96/sc96t_NY.txt>; *Estimates of the Resident Population of New York State Villages* (visited Mar. 25, 1998) <<http://205.232.252.23/nysdc/ftp/subctypo/villpop.htm>>.

at 1,595 people.^{13/} In fact, the recent construction and dedication of a new Catholic Church in DeRuyter demonstrates the community's vitality.^{14/} These clearly are not the indicia of a community that Cram describes as having "ceased to exist."

Cram claims that DeRuyter has no historical or cultural base and, thus, is less deserving of an allotment than Chittenango.^{15/} Other than the obvious insult that Chittenango is historically or culturally more worthy than DeRuyter, Cram offers no support for the proposition that these factors are part of the Commission's allotment criteria.^{16/} Cram clearly overlooks DeRuyter's contributions as a popular tourist destination. DeRuyter is part of upstate New York's Letherstocking region and offers attractions such as maple sugaring and fishing in nearby DeRuyter Lake. Like Chittenango, DeRuyter has an annual event, the Firemen's Field Days, which has been observed for over fifty years and is of great importance to the community.^{17/} While Chittenango offers Oz Fest, it hardly seems compelling to reallocate a well-established radio station based on an attraction that lasts for just a handful of days a year. Because DeRuyter continues to thrive as a community, the public interest would be disserved by reallocating Channel 286B to Chittenango.

^{13/} See 1996 Sub-County Population Estimates (visited May 5, 1998) <http://nysis.ciser.cornell.edu/subcopop96_2.html#Madi>.

^{14/} See Larry Richardson, *Bishop Moynihan to Bless Church Built in DeRuyter*, THE POST-STANDARD (Dec. 6, 1997).

^{15/} See *Cram Comments* at 6.

^{16/} As demonstrated *supra*, DeRuyter has a sufficient social and cultural base to satisfy the Commission's criteria for a community.

^{17/} See Tom Murphy, *Village of DeRuyter's Firemen's Field Days Scheduled for August*, THE POST-STANDARD (Jan. 29, 1998); *Half Century of Field Days: Fire Company Continues to Sponsor DeRuyter Events*, SYRACUSE HERALD-JOURNAL (Aug. 7, 1996).

C. Chittenango's Greater Population Does Not Justify Reallotment.

Cram needlessly reiterates that the proposed reallotment is in the public interest because Chittenango has a greater population than DeRuyter.^{18/} The Commission, however, has indicated that this alone is an insufficient basis to justify waiving the prohibition against the removal of DeRuyter's sole local broadcast service.^{19/} Indeed, a comparison of competing populations would ultimately lead to allotments only to large metropolises, with rural areas having none. This result would be inconsistent with Section 307(b) of the Communications Act of 1934, as amended,^{20/} and does not serve the public interest. Moreover, even the asserted benefit of serving a larger population may be illusory because Chittenango is a bedroom community of Syracuse.^{21/} As detailed in Cox's Comments, Chittenango's close proximity and interrelationship with Syracuse illustrate that WVOA's reallotment to Chittenango would, in essence, be a Syracuse allotment.^{22/} Under such circumstances, the Commission has stated that it would not

^{18/} See *Cram Comments* at 5 - 6.

^{19/} See *NPRM* ¶ 3.

^{20/} See 47 U.S.C. § 307(b).

^{21/} See *Cram Communications, LLC Petition for Rulemaking* Exb. (filed Sept. 12, 1997) (admitting that Chittenango is a bedroom community for Syracuse).

^{22/} Cram inaccurately analogizes Chittenango to Washington, D.C. and DeRuyter to Tysons Corner, Virginia. See *Cram Comments* at 7. This analogy overlooks the fact that Chittenango is a bedroom community to Syracuse and not nearly as developed as Washington. As detailed in Cox's Comments, Chittenango relies on the surrounding community for media, municipal services, and the employment of its residents. Therefore, the more appropriate analogy would be that Chittenango is to Syracuse what Tysons Corner is to Washington, D.C. Because DeRuyter is a community separated in distance and culture from Syracuse, it could be analogized to Warrenton, Virginia.

grant the reallocation.^{23/} Chittenango's greater population does not provide a sufficient public interest showing to disturb WVOA's present allotment.

II. Cram Provides No Evidence Why It Cannot Provide Chittenango With Specialized Service.

Cram has offered to continue to provide programming for DeRuyter, provide local phone service from DeRuyter to the station's main studio and maintain a public inspection file in DeRuyter.^{24/} Cram ignores, however, that nothing prevents Cram from offering these same services to Chittenango while retaining DeRuyter as WVOA's community of license. Indeed, because Chittenango already is within WVOA's 70 dBu contour, and Cram has not provided Chittenango with specialized service, the reallocation of WVOA should be denied.^{25/} Faced with similar facts, in *Brunswick and Waycross, Georgia*, 8 FCC Rcd 17 (1992), the Commission denied the proposed reallocation. The Commission found that, while the proposed community may be increasing more rapidly than that of the licensed community, and that the petitioner perceived the proposed community to be in greater need of service, the failure to provide specialized service and the disruption of removal of local service warranted denial of the allotment.^{26/} Based on Commission precedent, WVOA should remain allotted to DeRuyter regardless of Cram's proposal.

^{23/} See *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 5 FCC Rcd 7094, 7097 (1990).

^{24/} See *Cram Comments* at 5.

^{25/} See, e.g., *Sumter, Orangeburg and Columbia, South Carolina*, 11 FCC Rcd 6376, 6377 (1996); *Bronson and Cross City, Florida*, 10 FCC Rcd 8102, 8102-03 (1995).

^{26/} See *Brunswick and Waycross, Georgia*, 8 FCC Rcd 17, 18 (1992).

On its face Cram's proposal may appear as a means of satisfying the needs of both communities. However, if Cram's proposal were accepted, WVOA's primary responsibility would shift to Chittenango and all of WVOA's service to DeRuyter would be subrogated to the needs of Chittenango. While WVOA would have a commitment to DeRuyter, this commitment would be secondary to the station's obligation to service Chittenango. Without a service whose primary obligation is to broadcast programming for DeRuyter's needs and interests, DeRuyter will not have any local service. Consequently, DeRuyter's needs and interests will not be met any better with or without Cram's proposal. Because the effect of Cram's proposal will be the loss of sole local service to DeRuyter, the proposal should be denied.

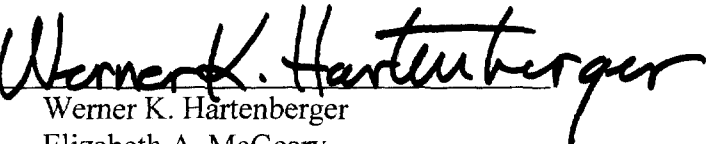
III. Conclusion.

Cram has the burden of demonstrating that reallocation of WVOA is in the public interest. This public interest showing must be substantial in light of Commission policy concerning the loss of DeRuyter's sole local service, DeRuyter's continued expectation of service and the Commission's short spacing rules. Cram, however, provides no evidence other than Chittenango's greater population as support for its proposed allotment. WVOA's origins are neither relevant to the current proceeding nor illustrative of any public interest benefits. Furthermore, DeRuyter is a vibrant community that would be disserved if its sole local service were removed. Moreover, Cram's reallocation proposal should be denied because Cram does not

provide Chittenango with specialized service although the community is already within WVOA's 70 dBu contour. For these reasons, Cox respectfully urges the Commission to deny Cram's petition to reallocate Channel 286B to Chittenango, New York.

Respectfully submitted,

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By: 
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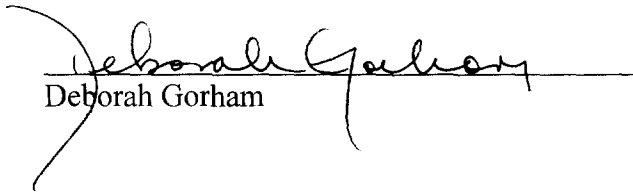
CERTIFICATE OF SERVICE

I, Deborah Gorham, hereby certify that a true and correct copy of the foregoing "Comments of Cox Radio, Inc." was sent on this fifth day of May, 1998, via first-class United States mail, postage pre-paid, to the following:

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